

36 FINAL REGULATIONS

Document No. 3174
BUDGET AND CONTROL BOARD
CHAPTER 19

Statutory Authority: 1976 Code Section 11-35-10 et seq.

19-445. South Carolina Procurement Regulations - Pre-Bid Conferences

Synopsis:

The Consolidated Procurement Code authorizes the Budget and Control Board to promulgate regulations governing the procurement, management, control, and disposal of any and all supplies, services, information technology, and construction to be procured by the State and any other regulations relating to implementation of Title 11, Chapter 35. (Sections 11-35-60 & -540(1)) The proposed regulation regards Pre-Bid Conferences. A review of public notices for state procurements revealed that when pre-bid conferences are conducted, over 70% are identified as mandatory. When a potential bidder (or offeror) fails to attend a mandatory pre-bid conference, the practice has been to reject their bid if one is submitted. Since 1970, the United State's Comptroller General has ruled that the failure to attend a mandatory pre-bid conference is not grounds for rejecting a bid. In doing so, the CG presented a strong case that mandatory pre-bid conferences are anti-competitive. Pre-bid conferences cannot and do not add to or take away from the requirements of a solicitation and do not in any way bind a bidder. This can only be done by a written modification to the solicitation. Indeed, Section 2042 currently states that nothing said at a pre-bid conference, regardless of whether it is mandatory, changes the invitation for bids unless a change is made in writing. Thus, mandatory pre-bid conferences tend to limit competition without any substantial corresponding benefit. In recognition of this, Section 2042 was modified to require that notice of any pre-bid conference be placed in the notice of solicitation, that a potential bidder's failure to attend an advertised pre-bid conference does not excuse its responsibility for successfully performing, that any agency desiring to use a pre-bid conference make a determination that the conference is justified by the unique nature of the project and that it will not unduly restrict competition.

Instructions: The following section of Regulation 19-445 is modified as provided below. All other items and sections remain unchanged.

~~Indicates Matter Stricken~~

Indicates New Matter

Text:

19-445.2042. Pre-Bid Conferences.

(A) Pre-bid conferences may be conducted. The conference should be held long enough after the Invitation for Bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Notice of the conference must be included in the notice of the solicitation required by Articles 5 or 9 of this code.

(B) Nothing stated at the pre-bid conference shall change the Invitation for Bids unless a change is made by written amendment. A potential bidder's failure to attend an advertised pre-bid conference will not excuse its responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the State.

(C) Pre-bid conferences may not be made mandatory absent a written determination by the head of the governmental body or his designee that the unique nature of the procurement justifies a mandatory pre-bid conference and that a mandatory pre-bid conference will not unduly restrict competition.

Fiscal Impact Statement:

No additional state funding is requested. The State Budget and Control Board estimates that no additional costs will be incurred by the State and its political subdivisions in complying with the proposed revisions to Regulation 19-445.

Statement of Rationale:

The Consolidated Procurement Code expressly contemplates the continued development of explicit and thoroughly considered procurement policies and practices. The proposed changes are needed to accommodate these developments and to further consolidate, clarify, and modernize the law governing procurement in this State. S.C. Code Section 11-35-20(d).

Document No. 3138
STATE BOARD OF EDUCATION
 CHAPTER 43

Statutory Authority: 1976 Code Sections 59-5-60, 59-31-210, 59-31-360 and Proviso 1.67. (SDE: Lost & Damaged Textbook Fees) in the 2007–08 Appropriations Act

43-71. Free Textbooks

Synopsis:

The purpose of this amendment is to modify how state-owned materials are stamped and distributed to pupils. The Drafting Notice was published in the May 25, 2007, State Register.

Section-by-Section Discussion

Section 11. Adding language to authorize the South Carolina Department of Education to determine the instructional materials (i.e., student editions) that will be circulated using the state textbook manager authorized in the 2006–07 Appropriations Act.

Section 13. Amending language changing the procedure for stamping or marking textbooks issued to pupils; adding language stating when a barcode will be affixed to a textbook; and deleting language concerning the stamping of textbooks that is no longer applicable.

Section 15. Adding language concerning the removal of or damage to barcodes by pupils on state-owned instructional materials.

Section 27. Amending language concerning the payment of lost and damaged textbook fees to reflect Proviso 1.67. (SDE: Lost & Damaged Textbook Fees) in the 2007–08 Appropriations Act.

Section 29. Most Favored Purchaser. Adding language assessing publishers liquidated damages for failing South Carolina Department of Education to provide contract information when requested by the. S. C. Code Ann. Section 59-31-540 (2004) requires investigations as to the prices of textbooks sold to other persons, states, or state boards.)

Instructions: Amend R 43-71, Free Textbooks, to Chapter 43 regulations.